

Hawaiian Gazette.

VOL. XXXI. NO. 59

HONOLULU, H. I.: FRIDAY, JULY 21, 1896.—SEMI-WEEKLY.

WHOLE NO. 1779.

Hawaiian Gazette.

SEMI-WEEKLY.

ISSUED TUESDAYS AND FRIDAYS

W. R. FARRINGTON, EDITOR.

SUBSCRIPTION RATES:

Per month, Foreign, \$0.50
Per month, Foreign, \$0.75
Per year, Foreign, \$5.00
Per year, Foreign, \$6.00

Payable Invariably in Advance.

C. G. BALLENTYNE,
Business Manager.

BUSINESS CARDS.

M. S. GRINBAUM & CO., Ltd.
Importers and Commission Merchants.
San Francisco, and Honolulu, Queen St.

HAWAIIAN WINE CO.,
Frank Brown, Manager. 28 and 30 Merchant St., Honolulu, H. I.

W. A. KINNEY.
Attorney at Law, Safe Deposit Building, upstairs, Fort Street, Honolulu, H. I.

LYLE A. DICKEY.
Attorney at Law. P. O. Box 336. Honolulu, H. I.

WILLIAM C. PARKE,
Attorney at Law and Agent to take Acknowledgments. No. 13 Kaahumanu Street, Honolulu, H. I.

W. R. CASTLE.
Attorney at Law and Notary Public. Attends all Courts of the Republic. Honolulu, H. I.

J. M. WHITNEY, M.D., D.D.S.
Dental Rooms on Fort Street. Office in Brewer's Block, corner Fort and Hotel Sts., entrance, Hotel St.

W. F. ALLEN.
Will be pleased to transact any business entrusted to his care. Office over Bishop's Bank.

H. E. McINTYRE & BRO.,
Grocery and Feed Store. Corner King and Fort Sts., Honolulu.

THE WESTERN & HAWAIIAN
Investment Company, Ltd. Money loaned for long or short periods on approved security.
W. W. HALL, Manager.

WILDER & CO.
Lumber, Paints, Oils, Nails, Salt, and Building Materials, all kinds.

H. W. SCHMIDT & SONS,
Importers and Commission Merchants. Honolulu, H. I.

JOHN T. WATERHOUSE,
Importer and Dealer in General Merchandise. Queen St., Honolulu.

Lewers, F. J. Lowrey, C. M. Cooke.
Successors to Lewers & Hickson.
Importers and Dealers in Lumber and Building Materials. Fort St.

HONOLULU IRON WORKS CO.,
Machinery of every description made to order.

ED. HOFFSCHLAGER & CO.,
Importers and Commission Merchants. King and Bethel Streets, Honolulu, H. I.

F. A. SCHAEFER & CO.,
Importers and Commission Merchants. Honolulu, Hawaiian Islands.

H. HACKFELD & CO.,
General Commission Agents. Queen Street, Honolulu, H. I.

E. O. HALL & SON, L'D.
Importers and Dealers in Hardware. Corner Fort and King Sts.
OFFICERS:
Wm. W. Hall, President and Manager
E. O. White, Secretary and Treasurer
Wm. F. Allen, Auditor
Thos. May and T. W. Hobron, Directors

A. J. DERBY, D. D. S.
Dentist.
Alakea Street, Between Hotel and Beretania Streets.
Hours, 9 to 4. Telephone 615.

CONSOLIDATED
SODA WATER WORKS CO., L'D.
Esplanade, Cor. Fort and Allen Sts.

HOLLISTER & CO.,
Agents.

TOURISTS' GUIDE
THROUGH
HAWAII.
H. M. Whitney, Publisher.

Only Complete Guide Published

BEAUTIFULLY ILLUSTRATED.

Price 75 Cents.

For sale by Hawaiian News Co. and Thrum's Bookstore. Honolulu, H. I.

AT GAZETTE OFFICE.
NEWSPAPER ARCHIVE

ENTIRE STOCK WAS DESTROYED BY FIRE

B. F. Ehlers & Co., Lose Their Goods Thursday Morning.

SMOLDERING FOR A LONG TIME.

Alarm Turned In by an Advertiser Boy—Stock Insured for \$20,000. No Blaze but Plenty of Smoke—Band Boy Falls Through the Roof, Etc.

At about 4:15 yesterday morning the fire whistle sounded "4" and proved to be at Ehlers's dry goods store on Fort street and in the center of the business section of the city.

The alarm was turned in at 4:35 a. m. by George, a paper carrier who had just left the "Advertiser" office with a bunch of papers. He was inserting of these under the makai door of Ehlers's store when he detected smoke coming out. He ran to No. 2 engine house and turned in the alarm.

The fire department was on the scene soon later. The two front doors were broken in and immediately great volumes of smoke came pouring out. Streams of water were set to work but the firemen could advance only a few feet inside the doorways on account of the suffocating smoke, this fact rendering it impossible to do anything else than throw the water about blindly.

However, when the fire was a little under control, men were able to get further in and then the fire department got in some good work.

The iron shutters on the window and the large back door were securely locked from the inside and the fire which seemed to be confined to the mauka back corner could not be reached effectively.

Flames were seen to dart occasionally from under the roof over this corner which seemed to be the seat of the fire and, after the inside of the store had been completely flooded with water, a hole was made in the roof and with the assistance of two volunteers, the firemen succeeded in getting a stream of water into play.

From this incident begins the quenching of the fire. The streams from below, in company with the one from above, were too much for the flames.

As the water was being played in from the hole in the roof and while the firemen, Charles Crane and Louis Ainaud of the Hawaiian band were standing on the boards constituting the ceiling of the store, one of the number broke and Arnaud fell to the floor below. For over a minute there was no answer to the calls from the men above and G. J. Boisse, a pressman employed at this office, pulling open the iron shutters on the mauka side, which although appearing tightly closed were only lightly so, he broke open the window.

By this time Arnaud answered and he soon hopped up serenely out of the smoke, water and ashes with his hat and right shoe gone, his right trouser's leg torn and with himself soaked to the skin.

At about 7 o'clock the flames were extinguished and nothing but a smoldering mass of dry goods remained to tell the story. Throughout the whole incident there was a remarkable lack of flames, the dense volumes of smoke being almost the only proof that a conflagration was in progress.

The following fire jury was appointed and at about 8 o'clock began its work of investigation: L. C. Ables, E. F. Bishop, J. A. Gilman, W. F. Allen and Henry Davis.

With them at the investigation were Theodore Hoffman, Superintendent of the Hawaiian Electric Company, and Messrs. George Grau and C. Bosse, representing Hackfeld & Co., Agents for the Trans-Atlantic and North German Insurance Companies of Hamburg.

Mr. Hoffman with Joe Gilman followed the electric light wire from the top of the makai front door to the mauka back corner of the store where the fire is supposed to have originated. Up to this place the wires were in perfect condition with the insulation intact, but at the spot where the fire was hottest, the insulation had been burned away.

An examination of the corner spoken of above showed that the ceiling and parts near it had been much more badly burned; that there was still visible a trap door which had not been used since Mr. W. I. Warriner had gone up to examine the wires about a fortnight ago, and that the appearance of the whole interior would lead almost anyone to suppose that the fire had gradually spread along the ceiling that sparks had dropped upon the combustible material below and that this had been the cause of so general a burnout.

A fire inquest was held in the Marshal's office at 2 o'clock and statements of employees and others were obtained.

Joe Frietas, clerk in Ehlers's employ, sworn. Have been employed by B. F. Ehlers & Co. for past five months, was there Wednesday, left at 5 o'clock. I sell goods. Sometimes I assist in delivering. The sweepings are put in the rubbish box outside and a man takes them away; the brooms, water pot, salesmen's coats and some rags are kept in the corner near the wash stand.

Kerosene is kept in the dressmaking department. Left the store at 5 o'clock Wednesday night and closed the door facing the dressmaking department. Sam Nott closes the door outside and Anton Fernandez opens it in the morning. Went to Harmony Hall that night, to the entertainment; retired a few minutes before midnight. Heard the whistle blow but did not get up, because I thought it was the steamer. My father called me and told me there was a fire but I said it was the steamer. Did not come down town until 7 o'clock in the morning. When I got to Emma Square a boy told me the store was on fire. Do not carry matches or tobacco in my pocket. When I smoke it is a "next" that some boy gives me. Salesmen do not smoke during the day. There are no oily rags kept there; clean the windows with sand and clean soiled gloves with velvet, nothing else.

Anton Fernandez sworn. Have worked for B. F. Ehlers & Co. for the past year; left the store at 5 p. m. Wednesday, was the first to leave. Am not assigned to any particular department of the store. The shoe brush and rags used in cleaning the windows are kept in the mauka corner. Have seen a light glass bottle filled with liquid there also; could not tell what it contained; it was full and corked up. Greasy rags were not kept there. Salesmen's coats hung there. First noticed the bottle after I went to work there. The coats were light material and were worn by the clerks when the weather was warm. Clerks are not allowed to smoke during the day. Goods are brought into the store by the front door and draymen do not linger around the place. The mauka door is generally open, but the inside door is closed.

Theodore Hoffman, Superintendent of Electric Light Co., sworn. Am an electrician and familiar with the details of wires in Ehlers & Co.'s store. The material used was the very best and the lights were protected by a fuse. There were thirty-four lights in the store. When wires went through wood they were bushed with rubber. The inspector visited the place between the 13th and 16th of July; reported four bushings out at the entrance and said the fuse was a little heavy. Examined premises this morning and am positive the electric wiring had nothing to do with the fire. Where the fire was the worst there were no lights. Each light was protected by its own fuse. The store was wired in November or December, 1894, and has all modern improvements in electric lighting apparatus. If the fire had been worst where the lights were, the wires would have shown it, as whenever wires touch they would melt. (To a jurymen): If there had been a short circuit we would not have known it at the works, as it would have blown the fuse over the door; but if the fire had been such as to have burned out the front of the building we would have known it at the works. So far as the lamp sockets were concerned, there were no defects. The smallest wire used in the store was perfectly safe with a 15-ampere fuse. Believe the fire originated from below, near the washstand. The store was wired by Mr. Goodman, a present book-keeper for the Hawaiian Electric Co. He was formerly the foreman and did the wiring. Spoke to him about the fire this morning; he had not seen the building since the fire, but gave it as his opinion that the fire broke out near the washstand, as when he wired it there was a lot of rubbish there.

W. I. Warriner sworn. Have not seen the store of Ehlers & Co. since the fire. Inspected the wires first week in July. Am electrical inspector for the Board of Honolulu Underwriters. The place was inspected at the request of H. Hackfeld & Co., and found the place wired in accordance with the rules of the Board of Underwriters. The rules of the board provide for fuse not stronger than 12 amperes. As the Electrical Company does not use that size, I provided for the use of two No. 15 amperes. In my opinion there is not a shadow of probability that the fire started from the electric light wiring. When I examined the premises the bushings were good except in the place over the door, but the holes were large and the defects were of minor importance. Cannot say that if the fire originated at the point where the defects were that the evidence would be noticeable after the fire. The wiring of the premises was done in an excellent manner and was above the average. I considered the place a first-class risk. Cannot see how it is possible for the fire to have originated in the electric wires.

As will be seen from the above testimony nothing tangible can be gathered regarding the origin of the fire. The testimony which will be presented at the completion of the fire inquest today may throw some light on the matter.

There are many theories abroad regarding the origin of the fire very popular among which is a match-chewing contest on the part of some rats. Lieutenant Needham, who passed by the Ehlers's building on the way to the Police Station at about 3:45 a. m., says there were no signs of fire at that time. The stock consumed by the fire and valued at about \$35,000 was insured for \$20,000 in the Trans-Atlantic and North German Insurance companies of Hamburg, of which H. Hackfeld & Co. are the Honolulu agents.

After the good work of the fire department in keeping the fire within bounds and putting it out so promptly it is too bad to have to record an accident to Fireman Carlsen of the chemical engine company who was badly cut about the hands and one wrist by falling glass. He was taken to the hospital where his wounds were dressed. He was visited by Chief Hunt in the afternoon and was found very weak from loss of blood.

CAPTAIN JOHN GOOD PLEADS NOT GUILTY TO CHARGES.

Band of Mosquito Fighters Fill The Great Hall.

FLAWS CAUSE LONG DELAY.

Two Witnesses Testify Against the Prisoner—The Riot Drill Didn't Suit Captain Good—Considered the Colonel a Sailor and Not a Soldier.

The sole object of interest to the military and to a good many who are not members of the guards was the effort martial of Captain John Good, Jr., of Company E, N. G. H., last night. But the proceedings were slow, and at times the members of the court looked as though they would welcome an adjournment with open arms.

The evidence was not in the least sensational, and many persons left the hall when they learned that the prisoner had not made an effort to organize a company for the purpose of overturning the Government, and that the charges were based mainly upon the fact that he preferred a soldier to a sailor as the head of the army, and with this preference in his mind denounced the riot drill in terms more forcible than elegant.

The long delay in getting permission from Minister of Foreign Affairs Cooper to amend the charges were on the court and the audience, and wearing caused them to lose the lustre of their eyes and nourish a desire for strength to kill the mosquitoes which infested the room.

Judge Advocate Kinney felt that he was not responsible for the errors of the man who compiled the laws contained in a little pamphlet which was to govern their actions, and as a mistake was made he would not argue.

CAPTAIN GOOD ARRIVES.

At 7:50 Captain Good, well groomed and with every indication of being well fed, entered the great hall, accompanied by Captain Ziegler. After saluting the officers of the court with the state-ness of an officer of the old line, he took a seat at the side of his attorney Hon. A. G. M. Robertson. After the usual questions as to any objections the prisoner might have to the personnel of the court, Judge Advocate Kinney swore in the interpreter, B. I. Marx and afterwards Lieut. Col. Fisher swore in the members of the court. The charges were then read, the prisoner remaining in a standing position.

THE CHARGES.

CHARGE AND SPECIFICATIONS PREFERRED AGAINST

Captain John Good, Company "E," First Regiment, N. G. H.

Charge—Conduct unbecoming an officer.

Specification First: That Captain John Good, Company "E," First Regiment, N. G. H., did address a large number of the men of his company, in the company's office, as follows: "The pay and allowance are out down, our services are not appreciated by the Government, and we ought to do as little as we can for the money. I'm going to do ten per cent less work, and I would desire you to do the same," or words to that effect.

This at the Executive building on or about the 1st day of May, 1896.

Specification Second.

That Captain John Good, Company "E," First Regiment, N. G. H., did use language of a similar character to Lieutenants Coyne, Ludewig and Schaefer. This at the officers' mess room, on or about the 1st day of May, 1896.

Specification Third.

That Captain John Good, Company "E," First Regiment, N. G. H., did use language of a character similar to that set forth in the first specification to various members of his company on a number of occasions within a week or so of May 1st, 1896.

Specification Fourth.

That Captain John Good, Company "E," First Regiment, N. G. H., did, while drilling his company on the regimental parade ground, conduct himself in a manner unbecoming an officer and a gentleman, speaking to his men in a highly disrespectful manner of his commanding officers, and did make use of the following words in reference to the riot drill, viz.: "This ———— half ———— sailor drill; if they wanted to get somebody at the head of the regiment, why in ———— didn't they get a military man, not a sailor. We won't go through this half ———— drill of the Colonel's," or words to that effect. Sneering language of like import was used on several occasions, but this last principally on or about June 19th 1896 at Honolulu on the regimental parade ground.

Specification Fifth.

That Captain John Good, Company "E," First Regiment, N. G. H., did, on

the occasion of the grand parade on July 4, 1896, yell at his men at the top of his voice, as follows: "——— you, guide right!" to the scandal of everybody in the vicinity.

This on Miller street on the morning of July 4, 1896.

Specification Sixth.

That Captain John Good, Company "E," First Regiment, N. G. H., did, on or about May 24, 1896, against the members of the First Regiment, N. G. H., responsible for the care of the field pieces in the Executive grounds, cause the charge of carelessness in guarding the field pieces to be communicated to the Commander-in-Chief, President Dole, and caused such charge to be based upon representations known at the time to Captain Good to be false and misleading, to-wit: The representation that a certain sight of one of the field pieces had been secretly abstracted from one of the said field pieces by a party unauthorized so to do, while guard was supposed to be kept over the same, and by the representation that a certain sight mailed to the Commander-in-Chief on or about the said 24th day of May was the sight alleged to have been abstracted aforesaid.

Specification Seventh.

That Captain John Good, Company "E," First Regiment, N. G. H., did, on or about May 24th, 1896, against the members of the First Regiment, N. G. H., responsible for the care of the field pieces in the Executive grounds cause the charge of carelessness in guarding said field pieces to be communicated to the Commander-in-Chief, President Dole, and caused such charge to be based upon representations known at the time to Captain Good to be false and misleading, of the representations contained in an anonymous letter mailed to the Commander-in-Chief, President Dole, on or about said 24th day of May, the contents of which letter is as follows:

"I herewith return to you a sight of one of the large guns in the shed on the Executive grounds. I was passing last Friday night and heard the hail of the sentries, and thought I would give you a little object lesson and show you how carelessly guard was kept over the Government property. I went in over the Likeliest street fence and went in the shed and took out the sight and went out. I could have taken in 200 men as easy as I went in. I could have disabled every gun in the battery. Such gross carelessness should not be allowed."

"A Friend of the Government"
R. H. McLean, Colonel Commanding First Regiment, N. G. H.

COUNSEL OBJECTS.

Attorney Robertson wished to remind the court that the amended charges as read had never been served on the prisoner. He would waive that, however, and object to the wording of the charges which read "conduct unbecoming an officer." There is no such charge in the history of military law, but there is one which reads "unbecoming an officer and a gentleman." Mr. Robertson read extracts from the law on this matter in support of his objection. "Under the ruling," he said, "of the secretary of war there can be no such offence as that charged in the bill of specifications."

Judge Advocate Kinney read the ruling and gave his interpretation of the law governing military trials in Hawaii. In his belief the law did not provide for any statement of offences. "We fall back on the simple proposition that there are certain things which we know to be in violation of his duty as an officer. The first question for you to decide is whether there is a specific creation of the offence mentioned. He contended that there was not. The law merely says that we shall have cognizance of certain offences."

Attorney Robertson submitted that if the law did not create the offence then there were no offences which could be tried by any court martial. He defined clearly the law as provided in the statutes and contended that there was no such offence as the one charged in this law. If the offences are not to be found in the authority he submitted that there were none to be tried.

COURT RETIRES.

Judge Advocate Kinney said he would not argue the point and Lieut. Col. Fisher announced to the court and audience that he would follow the precedent established by the court martial held here in the past and when the court wished to deliberate instead of clearing the room he and the other member of the court would retire. As these were questions that would require deliberation the court would now retire.

On returning the Lieutenant Colonel announced that the court had decided to abide by Robertson's contention that "amendment cannot be made by the Judge Advocate to any complaint without due authority from the convening commander."

The court had decided that the charge was incomplete and they would be referred back to the Minister of the Interior who is in this instance the convening officer.

Judge Advocate Kinney then asked that a recess of ten minutes be granted him in order that he might communicate with the minister and learn his wishes in the matter. This ten min-

utes recess extended over three-quarters of an hour at the end of which authority was brought for amending the charges to read "conduct unbecoming an officer and a gentleman."

Captain Good plead not guilty to each charge read by Judge Advocate. Testimony was then taken.

THE FIRST WITNESS.

A. P. Stanope was the first witness called and was sworn by Judge Advocate.

"Am Sergeant of Company E First duty sergeant, remember when an announcement was made reducing salaries of men in the regiment. Capt. Good made the announcement to men drawn up in line in the basement. When it was over he made a speech saying that he would do all he could for the men in the way of clothing allowance. Captain Good made remarks a day or two after this. May 1st, I think, in the office. He had about twenty men picked out to shoot in the match for the rifle. Said he did not think it advisable to put in a team as the government would give them no thanks for it. Captain Good made quite a speech at the time, but I cannot remember just what he said. On one occasion he said he had spent a great deal of time and money in getting the company up to the present standard, but he could not afford to spend any more money on it now. He told me once that he would not advise the men to practice for the present at any rate. Remember when the riot drill was introduced by Col. McLean. Remember in June last hearing Captain Good passing remarks about the sailor drill. Spoke derogatively of the drill. Made these remarks during the riot drill. Said he did not blame us for making mistakes in it and we would do as little of it as possible. Cannot remember how many times I have heard Captain Good refer to Col. McLean as a sailor and not a military man. Remember the 4th of July parade, heard Captain Good use strong language to the men on an order to 'guide right.' Remarks were made in a tone loud enough to be heard on both sides of the street."

ROBERTSON QUESTIONS.

Cross-examined—Fix the date of a meeting in the company office regarding the shooting match by the date of the reduction in pay of non-commissioned officers and it was on this same day. The object of calling us together was to say that we had not been treated right and we need not compete. Captain Good gave his own opinion and asked the men theirs. Don't remember whether there men who agreed with him. Was not a member of the team so he did not ask me. Don't remember exactly what Captain Good said as it was a long time ago. Don't remember whether he said anything about spending any money for practice. We are required to shoot ten rounds each month; am not a good shot and not qualified to say whether this was enough; should not think it was. I was never present at another meeting if one was held. Men usually shot in their own time; do not remember of other men doing the duty of the marksmen when they were away. The remarks made by Captain Good did not apply entirely to the target shooting, at least I do not think so. Captain Good has been no less strict since the reduction of pay.

THE CAPTAIN ERRATIC.

Consider Captain Good a changeable man, strict one week not at all the next and unusually so the following week. Has been more changeable than usual since the arrival of the Colonel. Prizes were offered the men to keep up to the standard. Captain Good once gave \$15 as a prize for this. He gave this prize last year; do not remember of his offering any prizes this year. First spoke to us after the reduction was made; told us to nut the man on guard who had been detailed to load ammunition. The effect of this would be that men who wanted to practice would have to buy their own cartridges. Riot drill is not in book of tactics; do not remember seeing any orders calling for a riot drill. Am not an expert in tactics; cannot say much about the riot drill. As a sergeant I know that the riot drill is something separate. Do not know where it originated, was not a soldier until I came to this country. Never saw anything in a book referring to this riot drill.

EFFECT OF REMARKS.

Cannot fix the date of any remarks made against the drill by Captain Good, they got to be so common that they went in one ear and out the other. The last time was in June when we were practicing for the Fourth of July parade. Some of the men would pick the drill up quick, others would be slow. Remarks would usually be made as the drill began. Don't think the riot drill interfered with the ordinary drill, some men might be forgetful, I was a right guide in the drill and could not see any mistakes that were being made by men in the rear. Have no idea how long the ship's bell has been in use at the Bungalow. Referring to the Miller street episode I do not remember whether the company was guiding to me or I to the company. Captain Good was addressing some one when he used the profane language.

CORPORAL NEELEY.

Corporal Neeley sworn. Have been a member of Company E for two years, remember official announcement of reduction of pay. Said it would not materially affect the enlisted men as it was directed principally to the men. He remarked at the time that our services were evidently not appreciated.

by the government in view of the fact that pay and allowance had been reduced, and if we did shoot we would not have his sympathy. At Captain Good's request I went among the men who had entered for the competitive shoot to ascertain how many would be willing to enter the match.

The result of Captain Good's remarks was a total falling off of interest in target practice and the general dissatisfaction which would naturally follow.

OBJECTIONS OVERRULED

Objections were offered by Attorney Robertson to a line of questions leading up to what the opinion of the men was after Captain Good had made remarks regarding the action of the Government in reducing salaries.

The judge advocate asked for a ruling and Lieut. Col. Fisher allowed the question.

Witness said a majority of the men refused to shoot on account of the reductions and because Captain Good was not going to shoot. Reported back the sentiments of the men to Captain Good, who said that as far as shooting went Company E could win the rifle if it wished. The riot drill did not meet with favor with Captain Good, and whenever anything went wrong he would make uncomplimentary remarks regarding it. He made no effort to conceal his disgust of the riot drill. Men neither encouraged him to make remarks against the drill, nor did they participate in them. As far as I know there were no refusals from the men to learn the riot drill. Not more than to any other drill.

THE BEST SHOT.

Cross-Examined. Am supposed to be one of the best shots in the company. Don't remember that I was in practice for the competitive rifle shoot; generally kept in practice. Had no stated days for rifle practice and went when we wanted to. I usually went out three or four times each week. Other men did not perform our duties when we went shooting; we merely changed posts. Captain Good questioned the men individually as to their wishes regarding the shoot. I decided to shoot until I found we could not get a team; those who were willing to shoot were not the best of shots. Remember Captain Good offering a cash prize to encourage shooting. Prizes were offered to men scoring to a certain point. Drills did not slacken up after the reduction of pay. Never noticed that the riot drill had any bad effect on the men when they were going through the infantry drill.

Court adjourned until this evening at 7:30.

Owing to the fact that one of the members of the court had a bone to pick with a mullet, the court martial proceedings against Captain Good did not begin promptly at 7:30, as President Fisher had announced. At 7:45 the court convened and Judge Advocate Kinney read the minutes of the previous night's session.

Sergeant William Carlyle was the first witness called and sworn.

Remember when the announcement by Col. McLean of the reduction of pay was made, and his assurance that he would do what he could to make it easier. Captain Good spoke of the company shoot in connection with the reduction of pay. The team was not formed for the reason that the men took no interest in the competition because Captain Good did not. Good talked to members of the company in the office; not to me individually, because I am not a good shot. Remember when Col. McLean introduced the riot drill, Captain Good frequently referred to it as the sailor drill. Presume he called it a sailor drill because Col. McLean introduced it, and it was generally understood that the Colonel had been on a man-of-war. Cannot remember how often these remarks were made; they were common before we had parade, and whenever we had drill. The remarks generally followed a mistake made by the men while drilling. Command to "order arms" was sometimes carried out by a charge bayonets, and on that occasion remarks were made by the Captain regarding the sailor drill. The impression of the men seemed to be that Captain Good did not consider the Colonel was capable of filling his position. These remarks were made by the Captain during the drill. Cannot remember any other remarks.

Cross-Examined. Men were called into the office by Captain Good in order to ascertain the feeling of the men as to the competitive shoot. He asked the men their wishes on the subject. Remember Corporal Neeley going among the men, did not come to me personally, as I was not a member of the team. Captain said he would go into the shoot. I understood the money to purchase extra ammunition came from the canteen. Do not know that money. For each prize came from Captain Good's pocket. Do not remember the amount of Captain Good's subscription to the fund to take home a member of the company named Carlson. Know it was a larger sum than was donated by any one else. Was not in the room all the time the men were there with the Captain as I was on duty in the hall. At this meeting he spoke of the reduction in pay and expense of keeping up the shoot. Spoke of increase in personal expenses and mentioned his daughter as going to school at Los Angeles. Remember that Captain Good's own reloading tools were in use by the company. There has been no reduction in the drill by the company. Never saw the sailors or the ship jackets come ashore from the ship. I took the term "sailor" in connection with the drill to mean Col. McLean. I did not know it was a name, but I did not have taken Captain Good's name as a name to Col. McLean. The name where the sailors introduced the Colonel came from.

Private Miller asked and with. Remember the time Captain Good came to us to the office and made remarks by saying the Government was apparently had no opinion of us as of common prostitutes, a necessary evil. Had stock phrases which he used

in referring to the drill, they were so frequent and common that I could not remember the date, heard them in June and July of this year. Have heard Captain Good remark that if the Government wished to have a man over us it would be better to have a soldier than a sailor. Frequently in giving orders he would preface his command with the remark, "According to the latest interpretation." The general impression among the men was that Captain Good did not consider Col. McLean qualified to fill the position. Remember Captain Good used violent language in relation to some member of the company who had made a mistake in guiding right.

Cross-Examined. Men were allowed ten rounds of ammunition each for target shooting, and anything over that the men would have to furnish, always understood that money for this came out of the canteen. Captain Good's own reloading tools were used by the company. Heard Captain Good say he had been doing a lot of extra duty without orders, but in the future he proposed to do as little as possible. He had been speaking of the shoot when he made this remark. Captain Good may have referred to the extra expense he had borne in keeping up the target practice. Remember Captain Good offering cash prize for shooting; could not say whether he did it more than once. Remarks on the riot drill I considered were against the Colonel. He spoke of the "sailor drill of the Colonel's" so often that it would be impossible to state any particular time. Have heard him say that "if the Government wanted to put a man over us it should put a soldier instead of a sailor." This remark was not so common as his reference to the sailor drill. It would be impossible to estimate the number of times he referred to the drill as I have stated; he made no bones of it; it was a common thing, and he would make the remark in the hall, on the stairs, in the yard, on the parade ground, and wherever else it suited him. I inferred from the remarks made by Captain Good that he did not consider Col. McLean qualified to fill the position. Captain Good once notified us that we would be required to form in single rank drill instead of double, and that he did not know how they would drill in that way, as there was nothing in the tactics concerning a single rank drill, and, strange to say, there was no interpretation of it with the order. Remember the Miller street episode. I was in the first set of four of the first platoon. There were two sets of fours. Am not on good terms with Captain Good; was reduced to the ranks by him, and gave him to understand that I did not like him.

By the Court, through Captain Kinney—When Captain Good stated that they (addressing the men) could get even with the Government by doing as little as possible, what did you understand by that? That he would do less work. Was it in reference to the target shooting, or did it impress you as referring to your general duties? To general duties.

Did Captain Good in the meeting with the members of the company, say or act in any way that would lead the men to believe that he would in any way refuse duty or encourage the members of his company to do so? That was my impression.

Did you do any less duty after the talk? Have done the same duty since the reduction of pay. We rise at 5 o'clock in the morning. That is by general order, and a man could not buck against it. Do not consider Captain Good's remarks were conducive to the good discipline of the men. I think Captain Good knew he was wrong.

By Robertson—The remark made by Good regarding less work to be done was during a conversation on shooting, but I consider that they referred to general work. Implied that he meant that he would not do any more work than he had to. Said he did not intend to do any more work, any more drilling, than he had to. He could not control the amount of work to be done by the company. He might do so for a day or two, until it got to headquarters, but not after that.

Private Buchanan. Am a private in Captain Good's company. Remember remarks made by Captain Good in reference to reduction in pay; said the Government did not appreciate our work and he did not propose to do any more than he had to. I am not sure whether it was before or after his remarks about the shoot. Speaking of the drill, he said it was a sailor's drill. It was known among the men that Col. McLean introduced the riot drill. Don't know that he ever used the Colonel's name, but he threw on references which the men believed were to the Colonel. He would begin his remarks by saying, "According to the latest interpretation of the Colonel's." Remember when the bell was put up. A few weeks ago, when we were going to the barracks, Captain Good said, "He's making a ship out of this place, all we need now is a rudder." On another occasion he said, "If they gave him rope enough he would hang himself." Never heard him speak respectfully of the Colonel, he always had a sneer on his face when he mentioned him. Understood the two officers were not friendly, and it was the general opinion that the two men would have to come together and there would be trouble. Remember the Fourth of July parade and the remark about guide right, it was in a tone loud enough to be heard a hundred yards.

Cross-Examined. I think Captain Good's voice is louder than the Colonel's. The meeting in the company office was regarding the shoot. From the speech he made I thought the Captain did not want us to go in the shoot. It gave us to understand that he did not want us to shoot that is he gave us his sentiment of it. He did not tell us we could not go in the shoot. Do not know whether they could get enough men to go in the shoot. There were five up by first pickers, but sixteen men, and then ten men, out of those were. Nearly all the company goes in now and again. After Captain Good made the speech the idea of a company drill was abandoned. Remember Neeley asking me to shoot, and I

told him that I had wasted so much time that I did not care to bother. I would have gone into a shoot for the Martin rifle if the majority had gone. Don't know that Corporal Neeley was sent around by Captain Good especially to ascertain the feeling of the men. Remark about the drill was made some months ago. The remark by the Captain beginning, "According to the latest interpretation," was a common one, not occasionally, but every day. Don't know that he would say, "According to the latest interpretation of the Colonel, shoulder arms." Cannot name any particular instance where this remark was made. Have heard him say, "According to the latest interpretation of the Army and Navy Journal." Believe this was in relation to the manual of arms. Riot drill came from the United States army. Is not in the tactics, but I have read of its adoption within the past few months. Never saw sailors of the Philadelphia go through the drill, and don't know that it originated in the navy. His remarks regarding the rudder applied to the whole place, not particularly to the ship's bell. When the flag was changed, the hoisting and lowering of it, Captain Good made the remark that according to the tactics it was not right. Have never had trouble with Captain Good except about two months ago regarding a pass. I was in a squad detailed to cut grass on the parade ground, and was told that the men who did this work could get a pass. When I asked Captain Good he refused, because I had not followed orders and asked for it before guard mount in the morning. I wanted to see the Colonel, but the Captain refused the permission. I then went to Captain Schaefer and related the circumstance, and he told me that Good could not refuse me, but I had better be sure I was right. Let the matter drop then and did not get the pass, but I understand it stands to my credit to be called for when I wanted it. Good never refused to make me corporal, because I never asked him. He said something about Giffard having made 80 per cent, but he did not say anything to me about mine being less. Heard from a man who used to be in the company that it was arranged between George King and Captain Good that I was never to be promoted, and knowing this I resolved never to give Captain Good an opportunity to tell me why I was not promoted to corporal. I acted for a time as corporal, but afterwards went to Captain Good and told him that if it suited him I would not act as corporal any longer. It suited him, so I have not done that duty since.

Adjourned until 7:30 this evening.

THE COURT DECIDES.

Justice Whiting Rules That Five Cents Is the Legal Fare.

Two Cases Decided Yesterday—The Tramways Company Cannot Overcharge Passengers.

What would have been a celebrated case but which was spoiled by being promptly decided in favor of plaintiff was the case of C. W. Dickey against the Hawaiian Tramways Company.

This was the issue in which the question of the right of the defendant to charge ten cents over the line of the road from the terminus on Nuuanu to that at Panahou. The case was tried in the lower court and decided in favor of plaintiff and was then carried to the higher court which decides unanimously in favor of defendant. Following is the decision written by Justice Whiting:

"A statute provided that within Judd street, the Industrial School and Panahou street in Honolulu, the fare on the cars of a street railway company shall be five cents for each passenger.

"The company prior to 1892 ran no car on a continuous trip between Judd street and Panahou, but at that time a connection was made between the cross lines so that a continuous trip was made between the above termini, for which the company charged a fare of ten cents. Held, that the legal fare was five cents and that the company was liable for a penalty for charging a greater sum of money for fare on its cars under Section 9 of Chapter 24, Session Laws 1884, providing for such penalty." Dickey and Ballou for plaintiff, Neumann and Davis for defendant.

The Court has also rendered a decision on the case of S. M. Ballou vs. Hawaiian Tramways Company, in which the judgment for plaintiff in the lower court is affirmed. The point at issue in this case was somewhat different from that in the other, as will be seen from the syllabus here given:

Where a "demand" or "charge" is made for fare in excess of that allowed by law to be demanded or charged, it is not necessary to prove that the excessive fare was actually paid, in order to recover a penalty provided by statute to be forfeited by a street railway in case it should "demand or charge" such excessive fare. Held, that the evidence supported the judgment."

Last summer one of our grade children was sick with a severe bowel trouble. Our doctor's remedies had failed, then we tried Chamberlain's Colic, Cholera and Diarrhoea Remedy, which gave very speedy relief. We regard it as the very best medicine ever put on the market for bowel complaints. Mrs. E. G. Gregory, Fredricktown Mo. This certainly is the best medicine ever put on the market for all enteric summer complaint, colic and cholera infantum in children. It never fails to give prompt relief when used in reasonable time and the plain printed directions are followed. Many mothers have expressed their sincere gratitude for the cures it has effected. For sale by all druggists and dealers. Benson Smith & Co., Agents for H. I.

ROBERT CATTON.

ENGINEER.

Importer of Sugar Machinery

Steam Ploughs, Rails and Rolling Stock, Cast and Wrought Iron Piping, Coffee and Rice Machinery,

Disintegrators, "Victoria" Cream Separators.

OFFICE AND WAREHOUSE - - - Queen Street, Honolulu.



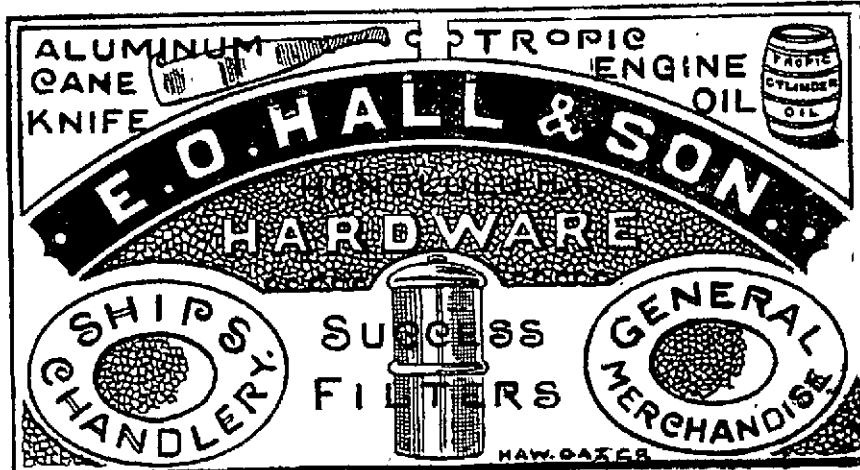
Tobacco, Cigars, Pipes and Smokers' Articles.

WHOLESALE AND RETAIL.

HOLLISTER & CO.

CORNER FORT AND MERCHANT STREETS.

Import direct from the principal factories of the World.



THE "TROPIC"

Is a pure, unadulterated lubricator, and is fully warranted to be of the highest possible grade and to give first-class satisfaction in every particular.

A large number of mills are using it, and we are having new orders every week. Those who use it once, want it right along. The

steps and cane cutters. It is the best knife ever offered for sale here. Try it.

STEP IN AND LOOK at our

"SUCCESS" FILTERS

We have a CRYSTAL ONE that shows the whole process at a glance. It is the best and easiest cleaned filter known. We will show you also our new

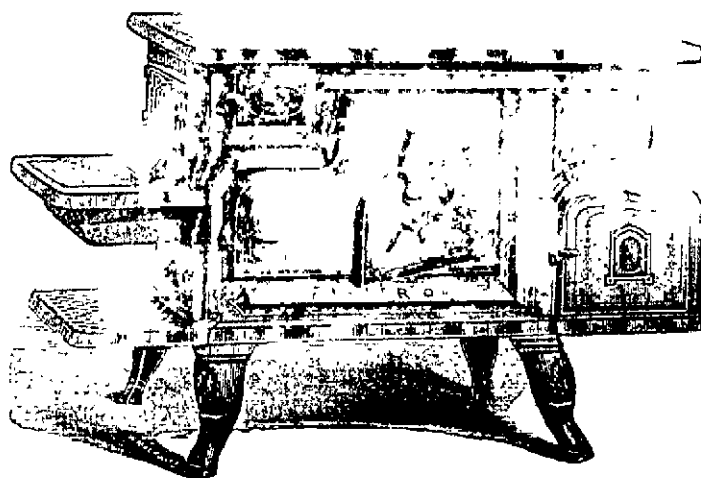
FRUIT OR MANGO PICKERS

We have a SPLENDID stock of Hardware, Ship Chandlery and General Merchandise on hand, and are adding to it by nearly every new arrival.

E. O. HALL & SON,

Corner Fort and King Streets, Honolulu.

JOHN NOTT,



Wrought Steel Ranges, Chilled Iron Cooking Stoves

HOUSEKEEPING GOODS:

Agate Ware (White, Gray and Nickel-plated), Pumps, Water and Soil Pipes, Water Closets and Urinals, Rubber Hose and Lawn Sprinklers, Bath Tubs and Sinks, O. S. Gutters and Leaders, Sheet Iron, Copper, Zinc and Lead, Lead Pipe and Pipe Fittings.

PLUMBING, TIN, COPPER, AND SHEET IRON WORK.

Diamond Block. 75-79 King Street.

Read the ADVERTISER.

75 Cents a Month.

Have You a Horse?

IF YOU HAVE,

Dress Him Well!

OAK-TANNED : : : HAND-MADE

Harness!

Looks Well, Is Strong, and Never Wears Out.

FRED PHILP.

Fine Hand-made Harness a Specialty.

92 KING ST., HONOLULU, H. I.

Telephone 111. P. O. Box 133.

TIME TABLE

Wilder's Steamship Company

— 1896 —

S. S. Kinau,

CLARKE, Commander.

Will leave Honolulu at 10 o'clock a. m., touching at Lahaina, Maalaea Bay and Makena the same day; Mahukona, Kawaihae and Lau: ahoehoe the following day, arriving in Hilo the same afternoon.

LEAVES HONOLULU.

*Will call at Pohoiki, Puna, on trips marked.

Returning, will leave Hilo at 8 o'clock a. m., touching at Lapauhoehoe, Mahukona and Kawaihae same day; Makena, Maalaea Bay and Lahaina the following day, arriving at Honolulu the afternoons of Tuesdays and Fridays.

ARRIVES AT HONOLULU.

Will call at Pohoiki, Puna, on the second trip of each month, arriving there on the morning of the day of sailing from Hilo to Honolulu.

The popular route to the volcano is via Hilo. A good carriage road the entire distance.

Round-trip Tickets, covering all expenses, \$50.

S. S. Claudine,

CAMERON, Commander.

Will leave Honolulu Tuesdays at 5 o'clock p. m., touching at Kahului, Hanalei, Maunaloa and Kipahulu, Maui. Returning, arrives at Honolulu Sunday mornings.

Will call at Nuu, Kaupo, once each month.

No freight will be received after 4 p. m. on day of sailing.

This company reserves the right to make changes in the time of departure and arrival of its steamers WITHOUT NOTICE, and it will not be responsible for any consequences arising therefrom.

Consignees must be at the landings to receive their freight. This company will not hold itself responsible for freight after it has been landed.

Live stock received only at owner's risk.

This company will not be responsible for money or valuables of passengers unless placed in the care of pursers.

Passengers are requested to purchase tickets before embarking. Those failing to do so will be subject to an additional charge of twenty-five per cent.

C. L. ROSE, President.

S. B. WIGHT, Secretary.

Capt. J. A. King, Port Superintendent, Honolulu, H. I., Jan. 1, 1896.



POWELL'S BALSAM OF ANISEED

WILL CURE YOUR COUGH.

ALL THE WORLD OVER, THE BECOG-ALIZED COUGH REMEDY. Its immense sale throughout the world indicates its inestimable value.

20,000 CHEMISTS SELL IT.

Those who have not already given it a trial should do so at once.

IN PALACE AND COTTAGE ALIKE, Powell's Balsam of Aniseed is the old and unexcelled CURE FOR BRONCHITIS, CROUP, HOARSENESS, AND ALL AFFECTIONS OF THE THROAT AND LUNGS.

SEE TRADE MARK AS ABOVE ON EACH WRAPPER. Beware of cheap imitations.

Refuse Imitations. Established 1824.

SCATTERERS AND FARMERS WHEN ORDERING THEIR STORES SHOULD NOT OMIT THIS TIME-HONORED COUGH REMEDY.

FOR A COUGH.

POWELL'S BALSAM OF ANISEED.

FOR ASTHMA, INFLUENZA, &c.

SOLD BY CHEMISTS AND STOREKEEPERS THROUGHOUT THE AUSTRALIAN, NEW ZEALAND AND THE COLONIES.

Bottles 1s. 6d. and 7s. 6d.

Agents for Hawaiian Islands:

HOLLISTER DRUG CO., L.D.

BENSON, SMITH & CO.

HOBSON DRUG CO.

WHAT THEY ARE DOING IN HILO.

Great Excitement Over the Recent Demonstration of Pale.

ORIGINAL LAKE IS INCREASING.

Honolulu Architects Will Build First Foreign Church—Dangers of Plant Importation—Hilo's Pot Names. Resignation of the Port Surveyor.

(From the Hilo Tribune.)

HILO, (Hawaii), July 18.—On Saturday, about 7 o'clock p. m., news flew about town like wild fire that Kilauea was again active. About 11 p. m. of the same evening later reports were returned from Mr. Lee, who had just returned from a descent to the scene of the disturbances. Signs of renewed activity were noted early Saturday evening. An investigating party was sent down into the crater and the following report was returned.

A lake forty feet by ninety feet was found in the north-west corner of the old lake. A fiery fountain about the middle of the surging lake was spouting into the air to a height of between 75 and 100 feet. The original lake has been gradually increasing in size and the fires have retained their usual fierceness.

The latest news from the Volcano was received at 5 o'clock Friday evening. Mr. Lee telephoned that the lake is constantly increasing and has already attained the respectable size of 200x200 feet. The fire was also increasing in activity and at times five or six fountains could be seen on the surface of the molten lake, some of them reaching a height of seventy-five feet. Quite a party of ladies and gentlemen were at the Volcano Hotel. Mr. Lee is confident that the lake will grow to five times its present size before next Saturday.

At a meeting of the congregation of the Hilo First Foreign Church held last Sunday morning, the plans submitted by Messrs. Ripley and Dickey of Honolulu, for a new church including Sunday school, were accepted and work on the same will be commenced as soon as the necessary plans can be completed.

The building will be 60x65 feet, with a tower, and will be of wood with a corrugated iron roof of a low pitch, painted red, giving a tropical appearance to the exterior. The walls are to be shingled clear to the ground, which gives a rich effect.

The estimated cost is twelve thousand dollars, and it is hoped that this amount will be fully subscribed so that the new church can be dedicated free of debt.

A reporter of this paper has been informed that there are people in town engaged in importing flower and fruit plants from Honolulu. There is a law against this sort of inter-island traffic although it seems to have been shelved. It has been noticed that many foreign diseases have appeared from time to time among the different plants of the vegetable kingdom in Hilo and the surrounding country that were heretofore unknown in this island. This is no doubt due to the bringing into our midst of flower and fruit trees from districts where disease is prevalent.

From time to time Honolulu people and incidentally the papers of the petted city revel in giving Hilo all sorts of names, good, bad and indifferent. Following is a list of them which begins with "The Rainy City, Pacific Boston, Ambitious City, Greater City, The Growing Town and ever so many more. With all these nick-names they forget not that Hilo is forging ahead at a business-like rate.

Dr. R. B. Williams and Miss Celia F. Plunkett will be married on Wednesday morning next, the 22nd inst. The marriage ceremony will take place at the residence of C. C. Kennedy, Esq. at Waikaka, and will be a private one owing to a recent bereavement in the bride's family.

Mr. J. M. Jones has resigned from the position of Port Surveyor for the port of Hilo. He will henceforth devote his time to the supervision of his coffee estate in Oahu.

It is stated that between thirty-five and forty Government school teachers throughout the islands have sent in their resignations. In Hilo and Lanipahochoe it is ascertained that four teachers have resigned.

Mr. W. Conradt and Mrs. Emily Stuppelbeen were married at Puuoa on Tuesday evening last, Rev. S. L. Desha performing the marriage ceremony. The marriage was a private one.

The sugar season will come to a close in a couple of months. The 1897

CANDIDATE MCKINLEY'S IDEA ON ANNEXATION.

"Mr. Hammond, in talking with me on Island affairs, said that within one year Hawaii would be possibly annexed as he had just returned from the East, and while there had a personal interview with his intimate friend, Major McKinley, who said that the Islands ought to be annexed, or words to that effect."

Since the Hawaiian plank of the Republican platform was first published in this paper, discussion has been rife as to just what that plank means. The question also asked is, How does McKinley stand on the question? The above is an extract from a letter written by D. F. Thrum while in San Francisco. Mr. Hammond, with whom the conversation was held, is the San Francisco agent of the American Bible Society.

season will begin about January and will continue longer than the present one or any in the past.

Mr. Fred S. Clinton was married lately at Honokaa to Miss Bessie Rickard. Mr. Clinton is manager of the Hamakua-Kohala Telephone Co.

A new two story hotel will be built in Hilo by the Hilo Hotel Company in the rear of the present building. Work is to commence at once, and it is expected to be ready for business by December next. The grounds will be handsomely laid out and a band stand erected.

TO WASH THE BLOOD.

A Simple Salt and Water Injection in Place of Transfusion.

Washing the blood is the latest remedy for diseases brought on by or causing a sluggish circulation and low state of the blood. The washing process is performed by plain salt and water. From a pint to two quarts of water are injected into the system by means of an ordinary hypodermic syringe.

A vein is opened in the arm of the patient with the usual antiseptic precautions, and the salt water injected in large doses. A profuse perspiration and general activity of the secretory organs follows, carrying away the noxious matter present in the blood. The new remedy is recommended by several doctors in papers read recently before the Academy of Medicine in Paris, and has been successfully employed in numerous instances. In cases of anaemia, typhoid, hemorrhages, sudden shock, and even in cases of intoxication, this blood washing, it is said, works wonders. For some years surgeons have used a saline injection in cases of collapse after an operation. It is the most powerful tonic known and has saved many lives. Its efficacy in ordinary diseases has, however, only recently been discovered.

Modern medicine has a tendency to resort to simple methods which recognize the all-curing powers of water. Washing the stomach, as practiced by several New York physicians, is of very recent origin and is considered invaluable in cases of indigestion. A simple bath of warm water is often all that is necessary to restore the stomach to its normal condition, by removing the poisonous waste products which are not profusely thrown off by the secretory organs. By means of a soft rubber tube put down the throat, water can be poured into the stomach and siphoned out again. To wash the blood is, of course, more difficult, as the water has to be injected into a vein.

It is well known that the blood of a frog can be drawn off and the blood of another frog substituted without greatly inconveniencing the creature. It was then found that a salt water solution can be substituted instead of blood, to a considerable extent, at least, and the frog will live and be as sprightly as ever. This fact first gave the scientists the idea of injecting an artificial serum into the veins of a human being, either anemic or intoxicated. The new remedy is very simple in its action and can always, it is said, be employed with safety.—Washington Star.

FISHER PAINTING.

A Work of Art Sold to W. C. Peacock Yesterday.

A magnificent painting of the Fall by Hugo Fisher, was purchased by W. C. Peacock yesterday morning. The view is entirely different from any painted here, and shows the grand panorama of Koolau from a point between the two high peaks.

The sun is entirely obscured by the heavy clouds, which make the tone of the sea in the distance a deep grey. A rain storm near the horizon is extremely natural. In the middle foreground the high hills are in a dull color while the peaks in the foreground dashes of light brightens the valley and lends a grand effect to the distance. The picture is on exhibition at the Pacific Hardware Company.

BOARD OF HEALTH.

Dr. Day Says Everything is Well at Quarantine Station.

Quarterly Reports From Koloa and Malulu Hospitals—H. Hackfeld & Co. Request Information.

At a meeting of the Board of Health held yesterday afternoon there were in attendance President Emerson, Drs. Day and Monsarrat, and Messrs. Reynolds, Lansing and Kelupio.

Fish Inspector's report showed 93,780 fish received at the fish market for the week ending July 20th. This increase over the usual amount was due to an installment of akule received from Molokai.

The usual quarterly report of Koloa hospital received from Dr. Goodhue, showed the following:

Number of patients in the hospital, April 1st, 1896, 2; number of patients since, 5; Hawaiians 3, foreigners 2, paying, 2; non-paying, 3; discharged, 4; in hospital 1; number of calls for medicine, 20; no deaths.

Letters from the Molokai settlement told of the death of Judge Kukana in Kalawao on Tuesday, July 14th.

The quarterly report from Malulu hospital showed the following:

Number of patients in hospital March 31st, 1896, 14, number received since, 45; Hawaiians, 12; foreigners, 33, paying 29; non-paying, 6; discharged, 44, died, 2, in hospital, 13; number of calls, 56.

A letter from H. Hackfeld & Co. requested information regarding the hot air fumigating plant in use here, the O. & O. S. S. agents in China having written here to find out about it. The secretary was instructed to send the requisite information and to emphasize the fact of its thorough efficiency as a fumigating apparatus.

A verbal report was made by Dr. Day showing the existence of only three cases of varioloid at the quarantine station with the patients getting along well; also that there are no prospects of further cases.

At 4 15 p. m. the Board went into executive session.

AUSTRALIAN RACERS.

Crackerjacks to Visit England, America and Hawaii.

Late advices from Australia report matters lively in cycling circles. The Australian cycle cracks, Megson, Lewis and Payne, have sailed from Sydney to London. They were given a great send off by their friends and the new South Wales League of Wheelmen. The trio are best professional riders Australia has produced so far and intend to compete in principal events in England. They will also visit America, returning to the Colonies via San Francisco and Honolulu.

Martin, the American cyclist, ran a dead heat in the open half-mile event at Melbourne, with Elliott. The final, won by Clinton (30 yards), was done in one minute one second. Martin was asked to explain his riding in the heat of the three-mile event in which he finished second to Clinton, though leading at the turn. His answer was that he was taken by surprise in the sprint and could not get his big gear going fast enough. The officials did not accept this theory and disqualified him for the event.

Chamberlain's Cough Remedy cures colds, croup and whooping cough. It is pleasant, safe and reliable. For sale by all druggists and dealers. Benson, Smith & Co. Agents for H. I.

A NEW FEATURE IN NAVIGATION.

A West India donkey was taken to Baltimore the other day on board a schooner, and was allowed his freedom on deck throughout the passage. He proved to have capital sea legs, and his ears, being nearly as long as his legs, turned out to be as good as an eophone for detecting sounds. He didn't tell what the sounds he heard were, but he always answered steamers and foghorns with his own dulcet bray.—Exchange.

THE WEARY WOMAN.

These lines of American origin, and written nearly twenty years ago have started on a fresh round, through their publication in answer to a correspondent's query.

Here lies a poor old woman who always was tired. She lived in a house where help was not hired. Her last words on earth were, "Dear friends, I am going. To where there's no cooking, nor washing nor sewing, But everything there is exact to my wishes. For where they don't eat there's no washing up dishes. I'll be where loud anthems will always be ringing, But having no voice, I'll get quit of the singing. Don't mourn for me now don't mourn for me never, I'm going to do nothing for ever and ever."

The cooking, washing and sewing are obsolete now, or nearly so, but women are just as tired as ever, and the plain will have to be revised, something like this, perhaps.

Here lies a poor woman who always was busy. She lived under pressure that rendered her dizzy. She belonged to ten clubs and read Browning by sight. Showed at luncheons and teas, and would vote if she might. She served on a school board with courage and zeal. She golfed and she kodaked and rode on a wheel. She read Tolstoi and Ibsen, knew microbes by name. Approved of Delsarte, was a "Daughter" and "Dame." Her children went in for the top education. Her husband went seaward for nervous prostration. One day on her tablets she found an hour free. The shock was too great and she died instantly. —St. George's Chronicle.

Your Stock

Will do better on FIRST-CLASS FEED.

HAY AND GRAIN

BOUGHT OF US

Is the very best at the VERY LOWEST PRICES.

CALIFORNIA FEED COMPANY

Nuuanu and Queen Streets.

TELEPHONE 124.

Art Goods.

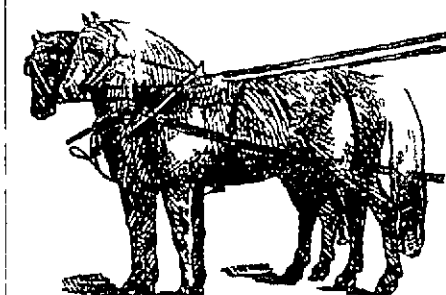
The demand for colors, both water and oil is the surest indication of a refined taste among the ladies of the Islands. We are in a position to supply the demand.

A full supply of colors, brushes, oils, varnish and canvas always on hand.

Picture framing, satisfactory picture framing, is due largely to the taste displayed in the selection of mouldings that will harmonize with the picture. We have the taste and mouldings. Let us give you a suggestion.

King Bros.,

HOTEL STREET.



ALEXANDER CHISHOLM.

(Successor to Charles Hammer.)

Manufacturer and Dealer in All Kinds of

Saddlery and Harness.

Orders from the other Islands promptly attended to.

Corner King and Fort Sts.

P. O. Box 322. Honolulu.

ONE BOX OF CLARKE'S B41 PILLS

Is warranted to cure all disorders of the Primary Organs, in either sex (acquired or constitutional), Gravel, and Pains in the Back. Guaranteed free from Mercury. Sold in Boxes of 4, 6, and 12. Chemists and Patent Medicine Vendors throughout the World. Proprietors: THE LINCOLN AND MIDLAND COUNTIES DRUG COMPANY, Lincoln, England. 1709.

COLDS, COUGHS, INFLUENZA, SORE THROAT

Ayer's Cherry Pectoral



Will relieve the most distressing cough, soothe the inflamed membrane, loosen the phlegm, and induce refreshing sleep. For the cure of Croup, Whooping Cough, Sore Throat, and all the pulmonary troubles to which the young are so liable, there is no other remedy so effective as

AYER'S Cherry Pectoral

A Record of nearly 60 years

Gold Medals at the World's Chief Expositions.

For the name Ayer's Cherry Pectoral, is prominent on the wrapper, and is blown in the glass of each bottle. Take no cheap imitation.

AGENTS FOR HAWAIIAN ISLANDS:

HOLLISTER DRUG COMPANY

Limited.



What Is PURIFINE?

It is the new disinfectant which has superseded all other disinfectants, being a scientific compound, having no odor, yet possessing the qualities of a powerful disinfectant.

The automatic distributor should be placed in every house in Honolulu where odors and germs of disease exist. They are placed free of charge, taken care of and kept working day and night for \$1.00 per month. It's an innovation, but on scientific principles, and appeals to everyone of common sense. The idea is this: The distributor drops two drops a minute, day and night. Foul odors are killed, yet no disagreeable smell of carbolic acid or crude disinfectants takes its place. You don't know that a powerful disinfectant is being used if you judge by the lack of odor. But it's doing the duty—doing it well. Can we show you the "Ideal Automatic Distributor"? Our Mr. Washburn will call, if you'll telephone to

The Hollister Drug Co.

EXCLUSIVE AGENTS

For the Hawaiian Islands.

CANADIAN PACIFIC RAILWAY

The Famous Tourist Route of the World.

In Connection with the Canadian Atlantic Steamship Line Tickets are Issued

To All Points in the United States and Canada via Victoria and Vancouver.

MOUNTAIN RESORTS: Banff, Glacier, Mount Stephen and Fraser Canon.

Empress Line of Steamers from Vancouver

Tickets to All Points in Japan, China, India and Around the World.

For tickets and general information apply to

THEO. H. DAVIES & CO., Ltd.,

Agents Canadian-Australian S. S. Line Canadian Pacific Railway.

The Daily Advertiser, 75 cents a month. Delivered by carrier.

CASTLE & COOKE

(Limited)

LIFE AND FIRE

Insurance Agents.

AGENTS FOR

New England Mutual Life Insurance Company

OF BOSTON

Elmo Fire Insurance Company

OF HARTFORD.

NORTH BRITISH

MERCANTILE INSURANCE CO.

Total Funds at 31st December, 1895, £12,433,131

1-Authorized Capital	£5,000,000	£	s	d
Subscribed	2,750,000			
Paid up Capital	1,575,000	0	0	0
2-Fire Funds	2,011,000	2	9	
3-Life and Annuity Funds	9,144,614	19	5	
		£12,433,131	2	2

The accumulated Funds of the Fire and Life Departments are free from liability in respect of each other.

ED. HOFFSCHLAEGER & CO., Agents for the Hawaiian Islands.

INSURANCE

Theo. H. Davies & Co., Ltd.

AGENTS FOR

FIRE, LIFE AND MARINE INSURANCE.

Northern Assurance Co

Of London for FIRE & LIFE.

Established 1836.

Accumulated Funds, \$3,975,000.

BRITISH AND FOREIGN

MARINE INSURANCE CO., Ltd.

Of Liverpool for MARINE.

Capital - - £1,000,000.

Reduction of Rates.

Immediate Payment of Claims.

THEO. H. DAVIES & CO., Ltd., Agents.

Hamburg-Bremen Fire Insurance Co.

The undersigned having been appointed agents of the above company are pleased to insure risks against fire on Stone and Brick Buildings and on Merchandise stored therein on the most favorable terms. For particulars apply at the office of F. A. SCHAEFER & CO., Agents.

General Insurance Company for Sea, River and Land Transport of Dresden

Having established an agency at Honolulu and the Hawaiian Islands the undersigned General Agents are authorized to take risks against the dangers of the sea at the most reasonable rates and on the most favorable terms.

F. A. SCHAEFER & CO., Agents for the Hawaiian Islands.

German Lloyd Marine Insurance Co. OF BERLIN.

Fortuna General Insurance Company OF BERLIN.

The above Insurance Companies have established a General Agency here, at Honolulu, undersigned, General Agents, are authorized to take risks against the dangers of the sea at the most reasonable rates and on the most favorable terms.

F. A. SCHAEFER & CO., Gnl. Agts.

Trans-Atlantic Fire Insurance Company OF HAMBURG.

Capital of the company and reserve, reichsmarks 6,000,000

Capital their reinsurance companies 101,650,000

Total reichsmarks 107,650,000

North German Fire Insurance Company OF HAMBURG.

Capital of the company and reserve, reichsmarks 8,850,000

Capital their reinsurance companies 35,000,000

Total reichsmarks 43,850,000

The undersigned, General Agents of the above two companies for the Hawaiian Islands, are prepared to insure Buildings, Furniture, Merchandise and Produce, Machinery, etc., also Sugar and Rice Mills, and Vessels in the harbor, against loss of damage by fire on the most favorable terms.

H. HACKFELD & CO.

S. T. ALEXANDER H. P. BALDWIN

ALEXANDER & BALDWIN

Commission Merchants.

NO. 3 CALIFORNIA STREET, SAN FRANCISCO

Island Orders Promptly Filled.

In the Supreme Court of the Hawaiian Islands.

March Term, 1896.

Edma G. Trousseau
v.
Bruce Cartwright and Hugh McIntyre,
Executors of the will of George P.
Trousseau, deceased.

Before Judd, C. J., Frear, J., and E. P.
Dole, Esq., a member of the Bar, in
place of Mr. Justice Whiting, dis-
qualified.

The condition in a contract to pay money
"when my circumstances allow" is fulfilled by evi-
dence that the promisor was in receipt
of money over and above his reasonable
expenses with which he could pay.

The fact that the executor of such pro-
misor had no assets to pay in full the
sum contracted for by their decedent
does not show that the condition of
ability to pay in the testator's lifetime
was not fulfilled.

A contract contemplated money to be paid
in installments, conditioned upon ability
to pay, evidence of ability to pay part of
the sum contracted for is a fulfill-
ment of the condition.

OPINION OF THE COURT BY JUDD,
C. J. (Frear, J., dissenting).

At the term of this Court held in
September, 1895, in overruling a de-
murrer we decided many points of law
raised and sent the case back to the
Circuit Court, First Circuit, for trial.
The case came on for trial in Decem-
ber last before Circuit Judge Magoon,
jury being waived, who, on January
7th last, filed his decision disallowing
the principal sum sued for, but giving
judgment for the annual payments
stipulated to be in lieu of interest. The
contract sued upon is an agreement in
writing, made in 1882, between the late
Doctor Trousseau and the plaintiff, who
was alleged to be his "separated wife,"
by which Doctor Trousseau (defend-
ant's decedent) admitted as absolutely
correct the claims and demands proved
by Madame Trousseau on the 11th
March, 1882, amounting to 150,865
francs and 50 centimes, of which he en-
gaged to pay immediately 20,000 francs
and also on the 1st January of each year
thereafter, beginning January 1, 1884,
a sum equal to 5,000 francs to be re-
mitted by the French Consul to Madame
Trousseau, in Paris, and to be regarded
as interest on the capital remaining of
130,865 francs and 50 centimes. Mons.
Trousseau then engaged, "if his cir-
cumstances allow and as soon as they
allow him, to discharge the total
amount of his debt to Madame Trou-
sseau, by paying over to her the capital
which will remain due to her." There
is also a provision that "as soon as
this capital is reduced to 100,000 francs,
the annual sum of 5,000 francs settled
as above will decrease in proportion as
the total debt is extinguished." &c.
Another provision is that as soon as
the first installment of 20,000 francs is
paid Madame Trousseau was to discon-
tinue a case then pending in our Court
against Doctor Trousseau for a larger
amount. (This sum was paid and the
case was discontinued.) The last pro-
vision is that the articles of agreement
should be performed in good faith by
both parties, and in the event of non-
payment of any of the sums mentioned
at the date when it falls due, Madame
Trousseau will be at liberty to renew
proceedings upon the mere information
which shall have been given to her by
the French Consul at Honolulu that
the sum of money has not been paid at
the date when it falls due. (The agree-
ment is set out in full in Trousseau v.
Trousseau, 10 Haw., —.) The annual
payments of 5,000 francs were regularly
made until 1st January, 1894, but
none was paid thereafter, and no part
of the principal was paid by Doctor
Trousseau during his lifetime.

In order to sustain the conditional
promise of Dr. Trousseau that he would
pay the principal sum "if his cir-
cumstances allowed him and as soon as
they allowed him," the plaintiff intro-
duced as evidence of his ability to pay
the principal sum sued for, which re-
duced from francs to dollars is \$26,173,
his last will and testament, executed
March 8, 1894, wherein he devised all
his property to one Makaoe, a native
woman, in which he declares: "I die
poor, and am only sorry for her sake,
as I never had any love for money and
always had enough." There was also
introduced in evidence the executor's
inventory of the decedent's property,
showing the liabilities (secured by
mortgage and otherwise) to be \$19,-
843.61, and the property, real and per-
sonal, estimated by the executors to be
worth \$35,914.01, which would leave the
net assets to be \$16,070.40. The cost of
the decedent's property is put by the
executors at \$62,317.52, but they esti-
mate the actual value to be, as stated,
\$35,914.01.

The trial Court held that, as it was
"extremely uncertain whether an estate
will realize the expectation of an ex-
ecutor entertained several months be-
fore the assets have been turned into
cash," he could not give a decision
based upon such testimony, and there-
fore declined to find for the plaintiff
the principal sum, but allowed the ar-
rears of the yearly installments of 5,000
francs, the sum of \$1,558.16, its pay-
ment not being conditioned upon ability
to pay. The plaintiff excepts to the
finding of the Court in disallowing the
principal sum. In reviewing this case
we remark that the trial Court was
right in holding that the promise of
Dr. Trousseau to pay the principal was
not absolute, but was conditioned upon
his circumstances allowing him to pay
it, and that ability to pay must be
shown as a prerequisite to recovery.

But it seems to us that the trial Court
proceeded upon the theory that the
test of the ability of a promisor who
has died, to pay is the amount of as-
sets which he may happen to leave at
his death. This is not the test. The
plaintiff must show that the promisor's
circumstances allowed him to pay.

Certainly the existence of clear assets,
over all liabilities sufficient to dis-
charge the whole amount, would be
evidence, but the converse is not true,

namely, that the amount of property
left by the promisor after all his other
debts were paid in full is not sufficient
to pay the principal sum sued for, is not
evidence of his inability to pay during
his lifetime.

In discussing the question whether
the evidence adduced shows ability to
pay during the lifetime of Dr. Trou-
sseau, we must remember that he de-
clared in the agreement that he owed
the principal sum, that he promised to
perform the agreement in good faith
and that he would pay the principal
as soon as his circumstances would al-
low him to do so. The agreement con-
templated payment by Doctor Trou-
sseau of the principal by installments,
provision being made for the propor-
tional reduction of the yearly payment
of 5,000 francs, as soon as the capital
sum was reduced to 100,000 francs at
the rate of 5 per cent. Whenever the
principal debt should be paid the inter-
est would cease, it having been re-
duced proportionately as the principal
was reduced. Another expression in
the agreement sustains the view that
partial payments by Doctor Trousseau
were contemplated. It is in the latter
part of the first clause of Article 4,
where he engages, if his circumstances
allow him, &c., "to discharge the total
amount of his debt to Madame Trou-
sseau, by paying over to her the capital
which will remain due to her." These
words "which will remain due to her"
would be unnecessary and meaningless
unless it was contemplated that the
principal was to be reduced from time
to time as the Doctor was able to make
payments. Nowhere in the agreement
do we find an expression that im-
plies that the decedent's circumstances must
allow him to pay the principal sum in
full at one time, or he be freed from the
obligation to pay it at all. A person
having made such a promise, if con-
structed the other way, could easily de-
feat his liability by expending his
money or giving it away as fast as he
received it, in order never to have
enough on hand to pay the debt in its
entirety.

Now, "good faith" would require
that where the decedent earned and re-
ceived sums of money over and above
the reasonable expenses of living of a
man in his position, he should apply it
to the discharge of this obligation. That
he was in receipt of money over and
above his reasonable expenses is evi-
denced by the inventory on file, where,
for instance, \$10,974 were shown to
have been expended by him in the pur-
chase of 28 ostriches for \$7,950, and the
remainder of this sum in buildings and
other equipments of an "ostrich farm."
To say the least, the investing of over
\$10,000 in a new and hazardous enter-
prise is some evidence that Dr. Trou-
sseau's circumstances admitted of his
paying at that time something on ac-
count of the debt he owed Madame
Trousseau.

Another item in the inventory is
"Boat House Property"—costing \$2,075
and consisting of a steam launch, a
catamaran, two other boats and a na-
tive whaleboat. By the will of Dr.
Trousseau it appears that he was pay-
ing \$25 per month for rent of boat
house and wages of boat keeper. In-
dulgence in the pleasures of boat sail-
ing, while perfectly proper in a person
owing no debts, was inconsistent with
his obligations under the agreement
and is evidence of his ability to dis-
charge a portion of his debt under the
agreement equal to the amount expen-
ded on these amusements.

The will of Dr. Trousseau declares
that he "always had enough." An in-
ference from this language would be
that he always had enough with which
to discharge his obligations and live
comfortably, but from the whole con-
text of the will we cannot find that he
intended to have this inference drawn
from this language. The will was
drafted by himself and was apparently
not carefully studied. Other expres-
sions in the will, however, as when he
directs his executors "to oppose abso-
lutely any interference from the French
Consulate in my affairs. I am a Ha-
waiian subject and I wish to dispose of
my property according to Hawaiian
law," and, leaving his property to the
person above stated, "after all my law-
ful debts in Honolulu are paid," indicate
that the comparatively small amount of
assets which were left after his debts
were paid is no indication that his cir-
cumstances would not have allowed
him to discharge the obligation to
Madame Trousseau, but rather that he,
being able, was not disposed to do so.
He was not by the agreement to be the
judge as to whether his circumstances
allowed him to pay the obligation in
question.

It seems to us that the trial Judge
did not give adequate weight to these
circumstances. In our minds, this evi-
dence, if not being contradicted by the
defendants, is evidence that the cir-
cumstances of defendant's decedent ad-
mitted of his paying since the making
of the agreement, during his lifetime,
of the principal sum or some part of it.
Now, proof of ability to pay a part of
the principal sum would be a fulfill-
ment of the condition in the agreement
to pay, and this being shown to the
satisfaction of the Court, would war-
rant a judgment for the whole amount,
and if the property of the decedent be
insufficient to discharge it and the other
debts in full, both it and they will have
to be paid pro rata by the executors,
treating the estate as insolvent.

It seems to us that the agreement
obliged the decedent to make payments
on account of the principal sum from
time to time as his circumstances al-
lowed him, and that the evidence ad-
duced by the plaintiff tended to show
that he was thus able. A new trial
should therefore be ordered, on the
ground that the finding of the Court
was based upon a misconception of the
meaning of the contract and a misap-
plication of the evidence to it.

New trial ordered.

A. S. Hartwell and W. L. Stanley for
plaintiffs C. Brown and L. A. Dicker
for defendants.

Honolulu, July 16, 1896.

OPINION OF E. P. DOLE, ESQ.

The controlling principle is the in-
tent of the parties—what did they say
—what did they mean? The contract
is exceedingly long and very loosely

Awarded
Highest Honors—World's Fair.
Gold Medal, Midwinter Fair.

DR.
PRICES
CREAM
BAKING
POWDER

MOST PERFECT MADE.

A pure Grape Cream of Tartar Powder. Free from Annatto, Alum or any other adulterant.

In all the great Hotels, the leading Clubs and the homes, Dr. Price's Cream Baking Powder holds its supremacy.

40 Years the Standard.

LEWIS & CO.,

Agents, Honolulu, H. I.

drawn but, upon carefully examining
it as a whole, it seems clear to me that
the parties must have understood and
intended that Dr. Trousseau was to
pay the debt as he could and that a
neglect to pay on account as his cir-
cumstances permitted should render
the whole immediately due. Dr.
Trousseau explicitly stated that the
justice of the claim was beyond dis-
pute, he bound himself to pay it if
his circumstances allowed and as soon
as they allowed, in naming the rate
of interest he provided that the
amount of interest should be reduced
in proportion as the total debt was ex-
tinguished and he agreed that a fail-
ure to make the payments mentioned
when due should render the whole debt
due. I think it would be a forced, un-
reasonable and unjustifiable con-
struction of the language Dr. Trou-
sseau used to hold either that he bound
himself to make payments as often
as he had a few dollars in excess of his
immediate necessities or that he re-
served the right to accumulate more
than one hundred and thirty thou-
sand francs before making a single
payment. In construing a contract
the language used (technical words
excepted) is to have its ordinary and
popular meaning unless an intention
to the contrary plainly appears, and
in determining what such meaning is
a court is bound to take judicial no-
tice of the established usages of the
business world.

The question what should be con-
sidered as substantial payment or ability
to make one is eliminated from the
case, for the evidence is undisputed
that Dr. Trousseau, if not able to pay
the entire debt at any one time, was
able to pay many thousands of dollars.
For the foregoing reasons I concur
in the result reached by the Chief
Justice.

Honolulu, July 16, 1896.

DISSENTING OPINION
OF FREAR, J.

I respectfully dissent. The Circuit
Court, jury waived, found for the plain-
tiff for the interest, and against the
plaintiff for the principal sum sued for.
The plaintiff excepted to the refusal
of the Court to find for her or to order
judgment for her for the principal sum
of \$26,173 claimed by her in her de-
claration, and to the finding of the Court
that the evidence failed to authori-
ze such finding and judgment. She then
moved that in place of the judgment
ordered for her for the interest, judg-
ment be entered for the full sum of the
principal and interest on the following
grounds:

"1. Decedent's will which is in evi-
dence, is prima facie evidence that his
circumstances allowed him during his
life time to pay said principal sum."

"2. Defendant's inventory, which is
in evidence, is prima facie evidence that
decedent's estate allowed him to pay
said principal sum."

"3. Defendant's inventory, which is
in evidence, has admitted assets, and
thereby, operated from a moment
benefit from the testator's conditional
promise, of that they have an asset
with which to pay the principal sum."

"4. Defendants are obliged to pay to
pay all the decedent's legal obligations
pro rata except preferred debts, if the
estate is insufficient to pay them all in
full. The principal sum here claimed
as acknowledged by decedent in the
agreement, declared on, was due and
owing by him to the plaintiff. The ne-
cessity of winding up the decedent's
estate, the statute of limitations of
claims against the estates of per-
sons deceased dispense with and do not
acquire nor permit the postponement of
plaintiff's claim until it shall appear
that after all other claims have been
paid in full there shall remain suf-
ficient property wherewith to satisfy
the plaintiff's claim."

This motion was denied and the
plaintiff excepted to the denial.

These are the only exceptions brought
here by this bill. Plaintiff's counsel
states in his brief that the second ex-
ception (to the denial of the motion
for judgment) is practically the same
as the first exception to the refusal
to find for the plaintiff for the principal
sum, and to the ruling that the evi-
dence failed to authorize such finding.
It will, therefore, be necessary to con-
sider only the points raised specifically
by the second exception. These are
four in number. I will first touch upon
the third and fourth points—which are
not referred to by the majority of the
Court.

The argument on the third point is
that the executors in order to avail
themselves of the defense of "non as-
set" or "insufficient assets" should
have set it up by special plea. Without
expressing an opinion as to whether
these defenses to be available, should
be specially pleaded or not, our statute
or practice is not in question.

In this instance the executors do not rely
on either of these defenses. They
are declared on a conditional promise
namely, Dr. Trousseau's promise to pay

a sum of money if and as soon as his
circumstances allow him and alleged ful-
fillment of the condition. A general de-
claration that he was unable to pay the
legislation of the fulfillment of the con-
dition and the burden was on the plain-
tiff to sustain the allegation. The fact
that the condition happened to be the
possession of sufficient assets by the
decedent did not make it different from
any other condition precedent the ful-
fillment of which must be shown. The
defense relied on was not the affirma-
tive one of "non habent," but a mere de-
nial of the truth of the affirmative al-
legation made by the plaintiff.

The argument on the fourth point
substantially that Dr. Trousseau was
deadly by rendering impossible the ful-
fillment of the condition precedent, makes
it unnecessary to prove fulfill-
ment in other words, that a de-
claration of promise became a mere al-
legation. A promise to pay a sum of
money upon the happening of an uncer-
tain event, and which remains uncer-
tain so long as there is life, does not
become absolute when it comes cer-
tain that the event will ever happen.
In re Bethell, L. R. 34 Ch. Div. 361,
was a case similar to this. In that
case the action was brought after the
death of the promisor, but the Court
held that proof must be made of the
promisor's ability to pay during his
life.

As to the first point, I agree with the
majority of the Court that decedent
will does not show that his circum-
stances allowed him during his life to
pay the principal sum.

As to the second point also, I agree
with the majority of the Court that the
executor's inventory does not show that
decedent's estate allowed him to pay
the principal sum. It is true, as contended by plaintiff's
counsel that the inventory is prima
facie evidence of such assets as are
shown by it, but it must be taken as a
whole and, so taken, it shows, "total
assets, \$35,914.01," and "total liabilities
\$19,843.61," of which liabilities
\$15,000 are notes secured by mortgages
and therefore preferred claims. The
including uncollateral accounts as as-
sets and without deducting the afore-
said claims, there remain only \$20,-
914.01, which certainly cannot be said
to allow the payment of the principal
sum, \$26,173; and this is the most fa-
vorable view for the plaintiff that can
be taken of the inventory. If the inven-
tory is not correct, or if the decedent
had been in fact at any time after the
execution of his agreement able to pay
the principal sum, the plaintiff should
have adduced further evidence to
show it.

It would seem as if there were noth-
ing further to be said, except that all the
exceptions should be overruled, since
all the points raised by these excep-
tions have been disposed of adversely to the
plaintiff; but the majority of the Court
have come to the conclusion that a new
trial should be granted upon consid-
eration of a point which, so far as I can
see, is not raised by the exceptions,
and under the circumstances I deem it
my duty to express my views on this
point also.

As I understand it the majority of
the Court decide that Dr. Trousseau
was bound to make payments on ac-
count of the principal sum as fast as he
could; that failure to pay any amount
on account when he could, rendered him
him at once liable for the whole prin-
cipal sum; that the inventory is evidence
that he could pay something on ac-
count during his life, and that as the
trial Judge did not take this view of
the case a new trial should be ordered.

Let us consider these propositions in
their inverse order. First, that as the
trial Judge did not take this view of
the case a new trial should be ordered.
The attention of the trial Judge was
not called to this view of the case,
and no exception was taken to his
omission to consider it, and therefore
it should not be considered by this
Court. See Norris v. Herbig, 9 Haw.
511; Byrne v. Allen, 10 Haw., —. The
trial Court ruled as a matter of law that
ability to pay the principal sum must
be shown to which ruling no exception
was taken. The exception in regard to
the inventory was taken to the refusal
or failure to find as matter of fact that
the inventory was sufficient to show
that decedent's estate allowed defend-
ants (the executors) to pay said prin-
cipal sum."

Secondly, that the inventory was evi-
dence that Dr. Trousseau could pay
something on account during his life.
I agree with the majority of the Court
that the inventory was evidence of this
fact; and, for that matter, the will also
was sufficient evidence of the fact, for it
refers to most of the property covered
by the inventory. But this fact should
not be considered on these exceptions,
and is immaterial in view of the law as
I find it.

Thirdly, that failure on the part of
Dr. Trousseau to pay something on ac-
count when he could, rendered him at
once liable for the whole principal sum.
I know of no proposition of law to the
effect that, where one promises to pay
a sum of money in installments, failure
to pay one installment when due
makes all the other installments or the
whole sum due at once. Stipulations
are sometimes made to that effect, as
often in mortgages, but in the absence
of such stipulation an action lies for
such installments only as are due and
unpaid. Whether Article 8 of the agree-
ment in question amounts to such a
stipulation is a question neither raised
by these exceptions nor relied on by
counsel. If it were such a stipulation
it would be unnecessary to consider
the inventory at all, for it is undis-
puted that one installment of 5,000
francs expressly provided for in the
agreement has not been paid. Even if,
therefore, Dr. Trousseau was required
to make payments on account when he
could, then judgment could properly be
given for only such an amount as the
evidence shows he could have paid. It
could not properly be given for the
whole principal sum upon a showing
merely that he could have paid a part.

But, fourthly, I cannot see how the
agreement can be construed as binding
Dr. Trousseau to make payments on ac-
count of the principal sum as fast as he
could. There can be no question that

an agreement contemplates that pay-
ments may be made on account, but
this is very different from the agree-
ment that he was to make a certain
sum of money at a certain time, or
on the happening of a certain event, or
on paying the whole or a part of a
certain debt.

Dr. Trousseau's only promise, in re-
spect was to pay the total amount
and as soon as his circumstances al-
lowed him. He cannot be construed to
mean that he must pay "each part"
and as soon as his circumstances al-
low him. Similar promises have often
been made, but such construction has
never been placed upon them. See, for
instance, the case of Salinas v. White,
1 Tex. 572, a case very similar to this
in which there was an agreement pro-
vided with a similar condition, as
follows: "I am indebted to John Wright
the sum of one hundred and forty
eight dollars, which said I bind my-
self to pay, as soon as circumstances
permit me to do so." See also in re
R. 4 Ch. Div. 73; Martock v. Chas.
son, 122 L. S. 229; Redwell v. Rogers,
30 Allen 438; Latourge v. Payne, 9 Pa.
St. 412. And in the case at bar such
construction appears not to have been
thought of until suggested by a member
of this Court.

The circumstances of the case also
bear out this view. Madame Trousseau
had brought an action against Dr.
Trousseau upon a French claim some
fourteen years old. There must have
been some doubt on both sides as to the
result of the suit. The parties thought
it best to compromise. Dr. Trousseau
acknowledged an indebtedness of a cer-
tain amount and promised to pay part
of it at once, the balance when his cir-
cumstances allowed it, and mean-
while a certain amount annually as in-
terest. In consideration of this Mad-
ame Trousseau agreed to discontinue
her suit and accepted these promises
part of them absolute, part conditional,
in place of her old claim. If the parties
chose to make such agreement, they
had a right to do so, and cannot com-
plain now if they are held to it. One
installment of 20,000 francs was ex-
pressly agreed to be paid at a definite
time immediately; so of the instal-
ments as interest, annually, but the
payment of the balance of the principal
was expressly made conditional upon
Dr. Trousseau's circumstances allowing
him to discharge the total amount.
There could have been no doubt that
at that very moment he was able to
pay something more than the exact
20,000 francs agreed to be paid at once,
or that he would very soon afterwards
be able to pay something on account,
and, if so, he could, under the terms
of the majority of the Court, have
been sued forthwith, or at least as
soon as it could be shown that he could
have paid something on account and
had not done so. This would prac-
tically deprive him of all benefit of
his contract. The parties certainly
have not during these sixteen years
of the contract placed any such con-
struction upon it, namely, that failure
to pay on account, when able,
would authorize either repeated suits
for such sums as could have been paid
or a suit at once for the whole prin-
cipal sum. No middle ground can be
taken, as, for instance, that payments
must be made, not in small sums as
they come in from day to day, but in
reasonably large sums from time to
time when the accumulations have be-
come large enough to make a substan-
tial payment for there is no criterion
to go by for ascertaining when the
accumulations would be large enough
to call for a payment and no such
position can be supported by any-
thing in the agreement.

Contracts of the kind in question
have often been made and have often
been construed by courts. Two views
have been taken. One is that the
condition is so uncertain as to be void,
thus leaving the promise absolute and
permitting recovery at once without
any showing of ability to pay. This
view is held by only a few courts and
is certainly against the whole tenor
of the agreement in question. The
other view is that recovery may be
had only upon showing fulfillment of
the condition, namely, ability to pay
the principal sum. This is the pre-
valent view. No middle ground has
ever been taken elsewhere so far as I
have been able to ascertain.

Where a just debt exists the Court
will endeavor to grant relief if possible,
but courts are bound to decide accord-
ing to established rules of law and
agreements as made by the parties
themselves, and to deny relief some-
times in particular cases where they
would prefer to grant it as sometimes,
where a just debt has become barred
by the statute of limitations. In this
particular case as it comes to this Court
I do not see how the plaintiff can pre-
vail. This is not holding that she has
no remedy at all, but only that she can-
not prevail in this particular case upon
this particular question.

It is argued that it is "an astonishing
proposition that the plaintiff can have
her interest money and not the prin-
cipal." This may be quite true where
appears to be the case here, the inter-
est sued for and allowed is not one of
the installments of 5,000 francs ex-
pressly agreed to be paid as interest in
Article 3 of the agreement, but is dam-
ages for the detention of the principal
sum from the time when the principal
sum was supposed, but not found by
the Court, to be due. The logical con-
clusion under these circumstances
would be, not to make another error
by allowing the principal sum, but to
correct the first error by disallowing
the interest. This cannot, however, be
done on this bill of exceptions, as the
plaintiff did not except to the allowance
of interest. If the interest sued for and
allowed were that provided for in the
agreement it would of course, not be
according to allow it without the prin-
cipal for as above stated in Article 3
an installment of principal is proper
to be for an installment of interest
when due without suing for the prin-
cipal for in such cases failure to pay
the interest when due does not render
the principal due or authorize judg-
ment for it.
Honolulu, July 16, 1896.

Merit

Made Merit Maintains the confidence
of the people in Hood's Sarsaparilla. If
medicine cures you when you are sick, if
it cures your nagging body and your friends
when they are ailing, if it makes wonder-
ful cures of many diseases everywhere,
then beyond any question that medicine
possesses merit. Just the truth about
Hood's Sarsaparilla. Prepared by
account and proper scientific processes—
known to all medicine men, a powerful
powers peculiar to itself. We know it
possesses great merit because it has

Made

Cures, not once or twice or a hundred
times, but in thousands and thousands
of cases. We know it cures, absolutely,
permanently cures, when all others fail to
do any good whatever.

Hood's Sarsaparilla is known to possess
merit or the power to cure disease; it is
known to be the best building-up medicine
on earth; it is known to be honestly adver-
tised, and for these reasons the people
buy and take Hood's Sarsaparilla almost
to the exclusion of other preparations.
In fact, Merit Made and Merit Maintains
the confidence of the people in

Hood's
Sarsaparilla

The One True Blood Purifier. All druggists, \$1.

Cure liver ills, easy to
Hood's Pills take, easy to operate. 25c.HOBBON DRUG COMPANY,
Wholesale AgentsValuable
Property
For Sale!

I am instructed by HENRY WATER-
HOUSE, Esq., to sell at my auction
rooms, on

Monday, August 10th,

At 12 o'clock noon, the following valu-
able property: The

"QUEEN"

A fine, large, airy, two-story building,
with grand basement, situated on Nu-
uanu avenue, nearly opposite the Eagle
House, built for an hotel, with the lat-
est improved sanitary fixtures; very
suitable for a club house, hospital or
place of entertainment. Also

"MOUNTAIN VIEW"

A charming Nuuanu Valley residence,
nearly opposite Government Electric
Light Works, suitable for a sanitarium,
built on a grand three-acre lot and com-
manding a magnificent view.

The house is new and large with nine
rooms, and there are four cottages in
the yard. A windmill and greenhouse
and a running stream on the premises,
together with the fruit and ornamental
trees, add not only beauty but value to
this unsurpassed Valley retreat.

A man on the premises will show any
one wishing to inspect over the place,
and the keys for the "Queen" may be
obtained at the office of Henry Water-
house, Esq.

TERMS—Half cash in U. S. Gold
Coin, balance mortgage on premises.

For further particulars inquire of
HENRY WATERHOUSE, Esq., or

W. S. LUCE,
4355-11 1777-61 AUCTIONEER.

Spencerian
Steel Pens.

ESTABLISHED 1860.

The standard pen among expert and
careful writers in the United States and
Canada.

No. 1—College, for Schools.
No. 2—Counting House, for Accountants
No. 3—Commercial, for Correspondents.

Sold by all Stationers in the Ha-
waiian Islands.

PROPRIETORS SPENCERIAN PEN
COMPANY.

New York N. Y., U. S. A.

FOR SALE.

